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The Spirit of Americanism

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Address by

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The Spirit of Americanism

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I THANK you for the invitation to lunch with you today and join you in that spirit which prompts you to treat this occasion as a sort of memorial service in honor of those of another generation, who, although in a different way, with an unalterable purpose and unfailing faith stood for the building of good citizenship.

Their lives were cast in a different political mould from that in which ours is cast, but there is no reason to believe that the material is different.

They were only seventy-two years removed from the beginning of the Federal Government. The belief that it was a government of limited powers was strong in their minds. They remembered what their own great lawyers and statesmen, as well as the great lawyers and statesmen of the northern states, had said about the character of the Federal Government which had been formed. The words of the framers of the Constitutional Compact, as Daniel Webster described it later when referring to it in his speech of 1830 on the Foote resolution, were still fresh in their memories. They knew that as there are unchangeable principles of right and morality, without which society would be impossible, so they believed that there are fundamental principles of justice without which all Constitutional government would be an intolerable and hateful tyranny.

THE people of the South of that generation were loyal to the principles on which they conceived the Federal Constitution to have been adopted and their protests against repeated violations of those principles led them to assert the right declared by the Declaration of Independence to exist in all free peoples, to set up a new government when the old became destructive of the ends for which it was established and to lay the foundations of the new one on such principles as to them seemed most likely to effect their safety and happiness.

The means the southern people adopted to secure that end consisted of withdrawing from what they considered to be merely a compact between the states after notice given of their intention to do so, which they did in general state conventions. In that purpose they were opposed by other parties to the Constitutional Compact, who just as sincerely believed that the Federal Government was an indivisible one and could not be dissolved in that manner.

The contention of the northern people was that the people of all the states were citizens of the United States and citizenship and allegiance could not be separated. That premise the southern people denied, holding that allegiance was due to no government but it was due to the paramount authority of the people of the states, which could make or unmake governments under our system. As the people in each state in convention assembled acceded to the union of states, so in convention assembled they could secede from it when in their judgment the government established became destructive of the ends for which it was ordained.

When the states whose people thought otherwise undertook to coerce the seceding states to recede from their position the Civil War resulted. The issue was decided against the South by the wager of battle. It was compelled to yield, as General Lee said, to overwhelming numbers and resources. The issue of law, however, was never decided against the South by force of argument and reason.

WE HAVE learned to accept the issue and, as Father Ryan suggested, to furl the conquered banner, although we believe that:

"Its fame on brightest pages,
Penned by Poets and by Sages,
Will go sounding down the ages,
Furl its folds though now we must."

In the Florida Constitution of 1868 we were required to insert the clause providing that "The Paramount allegiance of every citizen is due to the Federal Government" as a condition

of assuming our former status as a state in the Federal Union, which, itself, was an illogical requirement imposed by Congress, as, according to the theory on which the North waged the war, the Southern States were never, by their various secession ordinances, out of the Union.

The political doctrine of State's Sovereignty, now almost completely annihilated by federal usurpation of powers, cannot be refuted if it is admitted that the Federal Government is one of delegated or enumerated powers only. The ninth amendment indisputably proves it. That clause in the Constitution provides that the rights enumerated in the Constitution shall not be construed to deny or disparage others retained by the people. The enumerated rights referred to in the clause are the rights which the Federal Government may exercise and no other except the implied powers which are appropriate and necessary to the exercise of a power expressly given.

No statesman, jurist or historian, after whom I have read, has ever undertaken to maintain the theory that it was the purpose of the people of the sovereign states to set up a Federal Government of unlimited powers.

POWERS not delegated to the Federal Government remained in the people of the several states respectively undenied and undisparaged. If the Federal Government usurped the powers retained by the states, denied or disparaged them, to whom if not to the people of the states respectively did the allegiance of a citizen of the state go?

If it is contended that in such case allegiance was nevertheless due to the usurping Federal Government, then that government becomes by virtue of its own aggressions and crimes of usurpation an elective monarchy of unlimited powers, unless the Supreme Court of the United States, as Chief Justice Marshall suggested in the case of McCulloch v. Maryland (4 Wheat.) might regard it to be its "painful duty" to de-

clare such aggressions and unlawful expansions to be void.

It may be profitable to observe that the Supreme Court has many times in its history found the duty of opposing Congress and the Executive in their several and co-operative aggressions and usurpations to be "too painful" to declare void.

That spirit of the South, however, which led her to protest against violations of the Federal Compact and defend her position by all means available during four years of horrible warfare and sustained her during a still longer period of the cruel tyranny of the Reconstruction, should not perish but should find a new expression in these new and strange conditions.

It is essential that it should be so if we desire to protect American institutions and prevent the disappearance of what is left of the Republic.

It is said that at about the time General Lee surrendered, the officers and soldiers of his army of Northern Virginia indicated to him that if he would give the word they would make the war a duel to the death; they would drag it out in relentless guerrilla struggles and there should be no pacification of the South until the fighting classes had been exterminated.

Nathaniel W. Stephenson, in his book entitled "The Day of the Confederacy," said: Although the heroism of that proposal of Lee's men had its charm for so brave a man as Lee, yet he refused to heed it, because, considering that such qualities could be handed on to posterity, the suicide of an entire people of such spirit would have maimed incalculably the America of the future. It were better that such spirit should be kept alive than that it should be exterminated.

IN WHAT way can the America of the present day be maimed in the absence of a protesting and vigilant spirit on the part of the people, otherwise than by unlawful aggressions of the Federal Government and the exploitation of the

people in the interests of special groups and the furtherance of political intrigues? And do not such activities always result in defeating the purposes for which government is established, which are to secure the people in the possession of their inalienable rights to liberty, the ownership and protection of property and the pursuit of happiness?

That spirit of the old South which General Lee was so anxious should be passed on to posterity produces the qualities of good citizenship, which are the safeguard of this nation against the encroachments by the Federal Government upon the liberties of the people as citizens of the different states.

Whenever it is apparent that the Executive and Congress are encroaching upon the reserved rights of the states; whenever it appears that an Executive, who may be supported by a wide and overwhelming popularity, seeks to dominate Congress and direct its activities toward the enactment of measures seemingly required by existing emergencies, but for which the powers enumerated in the Constitution afford no authority, then the people of this country are within the political zone of an elective monarchy; a government of unlimited powers whose chart, as Mr. Glenn Frank said, may be merely an entangled web of "Alice in Wonderland economics," and whose sanction will be the unlawful promise of a division of wealth in a land of plenty.

Such encroachments of power, such an end to the great enterprise which was undertaken by the founders of the Federal Government to establish a representative democracy of limited powers, may easily be reached through the aid of a complaisant Supreme Court composed of nine lawyers, who under the so-called general welfare clause of the Constitution may build whatever arguments and apply whatever theories that will be necessary to impart a semblance of legality to usurpations of power that even Hamilton would have fled from.

THE Federal Government has proceeded through a period of sixty years in the direction of the centralization of power in Washington and the elimination of rights reserved to the states by express provision of the Constitution.

The powers to coin money, to borrow money on the credit of the United States and to regulate commerce with foreign nations and among the several states and to levy and collect taxes, duties, imports and excises, powers expressly granted by the Constitution have been by Congressional enactments and judicial interpretation widened and extended to such dimensions on the argument of increase of population and growth of industry and complexity of social relations, until a vast political machine with its six hundred and ninety thousand officers and employees with their various boards, commissions, departments and bureaus are administering the public affairs of the nation, ordering the lives of the people and shaping our political destiny and economic life, while no voter, as Mr. John W. Davis said, has the right to vote for more than five of that vast horde of tax eaters, the so-called servants of the people, in fact servants of a political machine dominated by whatever may at the time through skillful propaganda be popularly called public sentiment or the general welfare.

Have we no chart by which governmental activities may be guided except the theories which some politician may assert to be for the general welfare and which by skillful propaganda he succeeds in making popular? Is every emergency to be the all-sufficient cause and justification of federal usurpation of power?

In 1862 an emergency existed. The war between the states was rapidly weakening both sides to the controversy in man-power and wealth. Trade was practically suspended and gold and silver coin was scarce. In that situation Congress passed the Legal Tender Acts. Treasury notes in the sum of one hundred and fifty million dollars aggregate face value were issued. They were made by Congressional fiat

legal tender for the discharge of all debts payable in dollars upon contracts made before or after the passage of the act. The validity of that act was challenged in the case of Hepburn v. Griswold, 8 Wallace.

The Supreme Court of the United States then consisted of eight Justices, one of whom was Salmon P. Chase, Chief Justice. By a majority of five to three the act was declared to be in violation of the Constitution and not within the power of the Federal Congress to enact.

By an act of Congress the membership of the Supreme Court was increased to nine. Mr. Justice Grier, one of the majority of five, resigned. President Grant appointed Mr. William Strong of Pennsylvania and Mr. J. P. Bradley of New Jersey to fill the vacancies. Two cases, Knox v. Lee and Parker v. Davis, involving the question of the legality of the legal tender acts, were pending before the Supreme Court. On motion they were taken up for consideration. The Court, by a majority of five to four, overruled the decision in the Hepburn-Griswold case, 20 L. Ed., and held the legal tender acts to be valid. Mr. Justice Strong wrote the opinion, and Mr. Justice Bradley wrote a concurring opinion. Chief Justice Chase dissented and Justices Clifford and Field each wrote dissenting opinions agreeing with the views of the Chief Justice.

That act and the latter decision enabled a debtor to discharge his contract obligations to pay money of the Constitution by paying the dollars in treasury notes which were of very much less value than silver or gold money, the money of the contract and of the Constitution.

If Congress had any such power as it exercised in the passage of those acts, to take from the creditor and give to the debtor, then in another emergency of a different type it has the power by legislation to take from the debtor and give to the creditor.

PRESIDENT Andrew Jackson, one of the protagonists of the preservation of the Federal

Union, but a strong believer in its limited powers, thought every one was evil who did not believe in the "Union and hard money."

Whatever may be said for the economic necessity of legal tender treasury notes, which were merely the government's promise to pay, it does not justify an usurped power and a complaisant court.

From that date to the present day the history of the Federal Government has been marked by expanding powers and encroachments upon the powers of the states reserved to them by the Constitution. It would make this paper much too long to give even a summary of the numerous federal invasions of state powers resting upon a sophistical latitudinarian construction of the Constitution and supported by complaisant judicial authority.

Mr. Franklin Pierce, in his book entitled "Federal Usurpation," written twenty-five years ago, gives a full account of Executive, Legislative and Administrative aggressions and usurpations to that date. It is impossible to read the arraignment of the Federal Government upon that charge, and the evidence adduced by him to support it, and believe that the Federal Government is functioning within the scope of its delegated powers. The new doctrine that the powers of Congress arise from the powers "not expressly withheld from Congress by the Constitution," an expression occurring in the case of Juilliard v. Greenman, 28 L. Ed. (U. S.) 204, is one which at any time may change this government into one of unlimited powers save only such powers that are expressly enumerated in the Constitution to be retained by the states, if there are any such.

Chief Justice Marshall said that the Government is one of limited powers, and that it may not overstep those powers the Constitution is written so that it might be a guide and restraint upon the departments.

Mr. Justice Harlan, of the Supreme Court, said: Let us hope that this great instrument, the Constitution, will weather the storms, which

the ambitions of certain men are creating in the effort to make this country a world power.

A man once said to Gouverneur Morris: "The Government has a good Constitution." Morris replied: "That depends on how it is construed."

Jefferson said that tyranny of the Legislature is really the danger most to be feared, but that the tyranny of the Executive power will come in its turn. Wilson said that the Government is best described by calling it a government by the Chairmen of Standing Committees of Congress.

Martin Van Buren said: "There exists not upon this earth, and there never did exist, a judicial tribunal clothed with powers so various and so important as the Supreme Court of the United States." A writer on constitutional law said the Judges are not only the guardians, but also at a given moment the masters of the Constitution. (Dicey.)

Mr. Pierce says that the "exercise of arbitrary power is bad, because arbitrary power whether it be political or industrial has always had but one tendency and that is to make good citizens bad citizens."

The usurpation of power, the transgression by the Federal Government upon state powers, the exaltation of the President, the building up by him of a wide and overwhelming personal popularity, will tend, as de Tocqueville said of the French Government, to cause the government to assume the place of Providence, so it will be natural for everyone to invoke its aid in his individual necessities.

We have had the slogan of the Full Dinner Pail, of McKinley; the Square Deal, of Roosevelt; the Back to Normalcy, of Warren Harding; the Two Automobiles in One Garage, of Hoover; and now the New Deal, of President Roosevelt.

Every argument has been made to justify the expanding power of the Federal Government. The express powers to coin money, to borrow money on the credit of the United States, to

regulate commerce among the states, to establish post offices and post roads, have been by construction held to authorize and empower the government to extend its powerful arm over nearly every industrial and agricultural interest in the country. Now to justify further extension of power, the so-called Welfare Clause of the Constitution is invoked to carry out whatever theory may seem likely to possess the merit of restoring prosperity, annihilating crime and providing a living for everyone by placing him or her on government relief or on the government payroll.

THE people have been told that there is a general welfare clause in the Constitution. It does not exist as a separate, independent, substantial grant of power to the Federal Government.

The phrase "general welfare" occurs in the preamble to the Constitution, but by agreement among all historians, publicists, lawyers and jurists, its presence in the preamble confers no power upon the Federal Government.

It occurs again in paragraph I of Section VIII of Article I in the following words: "The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States."

The history of the adoption of that clause shows that Mr. Alexander Hamilton's fight in the convention to give Congress unlimited power was lost and Mr. Pinckney's plan for definitely granted powers obtained. Notwithstanding that the purpose of Mr. Hamilton was definitely defeated, his followers for years urged that the phrase conferred a distinct and substantial power.

Judge Story, however, in his Commentaries on the Constitution, set that disputed point forever at rest (Sec. 907). He said: "Before proceeding to consider the nature and extent of the power conferred by this clause, and the reasons on which it is founded, it seems necessary to

settle the grammatical construction of the clause, and to ascertain its true reading. Do the words, 'to lay and collect taxes, duties, imposts, and excises,' constitute a distinct substantial power; and the words, 'to pay the debts and provide for the common defense and general welfare of the United States,' constitute another distinct and substantial power? Or are the latter words connected with the former so as to constitute a qualification upon them? This has been a topic of political controversy, and has furnished abundant materials for popular declamation and alarm. If the former be the true interpretation, then it is obvious that under color of the generality of the words, to 'provide for the common defense and general welfare,' the Government of the United States is, in reality, a government of general and unlimited powers, notwithstanding the subsequent enumeration of specific powers; if the latter be the true construction, then the power of taxation only is given by the clause, and it is limited to objects of a national character, 'to pay the debts and provide for the common defense and the general welfare'!"

Mr. Henry St. George Tucker, in an address delivered before the Georgia Bar Association in 1927, proved indisputably that the common defense and general welfare contemplated was not that of the people of the United States but of the Government of the United States.

There can be no assumption, said Mr. St. George Tucker, that Congress has the power to determine what is the common defense and what is the general welfare. He said the contention that Congress may determine that any object is for the general welfare and then appropriate tax money which it is authorized to levy for that purpose is to hold that there is "united in Congress two great powers, dangerous because unlimited, the one to select the objects of its favor, and the other the power to appropriate money from the treasury for such objects. The unlimited power to tax and the

unlimited power to determine their beneficiaries."

SUCH a contention is to affirm that the Federal Government is one of unlimited powers.

The general welfare of the Government of the United States is outlined and defined by the eighteen express grants of power contained in Section VIII, of Article I, of the Constitution, and the phrase "general welfare" is a limitation upon and not an extension of the powers granted.

The discussion of Mr. St. George Tucker, which is contained in the July and August numbers of the American Bar Association Journal, 1927, should be studied by our citizens and read and explained in the schools to the end that people may fortify themselves by argument against federal policies which tend to make the government a sort of agency of Providence, whose beneficent purposes are accomplished through executive agencies, commissions and reliefs, by a liberal, even bountiful, distribution of the wealth of the country taken by means of taxation upon the properties of the prudent, economical, conservative and thrifty element of our population.

Mr. St. George Tucker concludes his article with the statement: "Thus we find in our conclusion that there is no general welfare clause in the Constitution." Mr. Alexander Hamilton's effort to put it in the Constitution as a separate and substantial power was six times defeated in the Constitutional Convention.

A long list of the names of jurists, statesmen and publicists is given in support of St. George Tucker's view, among them are Chief Justice Marshall, Mr. Justice Brewer, Judge Miller, Judge Cooley, John C. Calhoun, Thomas Jefferson, Spencer Roan and Presidents Cleveland and Coolidge.

To command politicians to do away with the unlawful exercise of power in order to save the government is to command them to give up that which to them makes government worth saving, said one writer. But Hallam, the historian,

said: "The durability of liberty owes its greatest security to constant suspicion by the people," and "There is certainly danger in these delegations of preeminent trust," and Sir Charles J. Napier said: "As to Government, all discontent springs from unjust treatment. The only agitator is injustice." John Fiske said: "If the day should ever arrive when the people of the different parts of our country shall allow their local affairs to be administered by prefects from Washington and when the self-governments of the states shall have been so far lost as that of the department of France, on that day the political career of the American people will have been robbed of its most interesting and valuable features and the usefulness of this Nation will be lamentably impaired."

Nearly, if not quite, all internecine political disturbances have arisen from the ambition of political leaders, usurpation of power, exercise of unlawful authority, invariably in favor of special interests, the people usually lulled into a feeling of security by a temporary prosperity until the government substituting its own mistaken paternalistic theories of general welfare for the individual activities of the people, as de Tocqueville said: "They are aroused to a sense of their own misery," or utter dependence upon the public policies of those in power.

Then come economic disturbances, unrest, suspicion and crime—such has been the history of nations. It was true in Roman history, in English history. The usurpations of King John and his supporters led to the protest of the Barons, who were ready for an insurrection but secured Magna Carta; it caused the downfall of Charles I and the ascendancy of Cromwell. It was true in French history when the downfall of Louis XVI and his queen occurred and the elevation of Robespierre, and the reign of terror followed. It was the cause of the Civil War in America; the loss of Cuba and the Philippines to Spain; the downfall of the German Empire as her dream of Grosser Deutschland und Mittel Europa became the basic principle

of her "Kultur" and the destructive influence upon the happiness of the world.

WHEN will the "worship of Mammon" cease to be the motivating spirit of man in his pursuit of happiness? In the brief history of our own country we passed from the insignificant condition of struggling, jealous, weak and uninfluential states, in a faulty and ineffectual confederation, to a federal organization which bid fair to set an example of a government of "exalted justice and benevolence." Then came expanding powers and usurpations of authority and political ambitions centralizing in Washington. We experienced occasional periods of prosperity for a short while and became a world power exercising as we believed a great influence for the democratization of the world.

Our joy was short lived, as the lives of governments are reckoned. For five years we have struggled in an economic depression more fearful in its toll of destruction of wealth, social unrest, human distress and criminal activities than we thought it was possible for the American people to suffer.

The progress that crime had made is a repulsive blot upon our record. The information given out by the United States Flag Association is enough to put us to shame. The cost of crime, upwards of thirty billions of dollars per year, is nearly, if not quite, ten times more than it costs the people to maintain their public school systems. Mr. Courtney Ryley Cooper, in his book recently published entitled "Ten Thousand Public Enemies," said crime costs every man, woman and child in the United States $120.00 a year in high insurance premiums, extra costs brought about by racketeering, high taxes for the army necessary to combat the millions of law breakers, monetary losses from robberies, larceny, embezzlement, assaults, burglaries, murders and kidnapings.

He said that "out of every forty-two persons in the United States one is either a convict, an ex-convict or possessed of a police record of

arrest." We are regarded as the most lawless people in the world. It is said that Oswald Spengler, a great German historian, referred to us as a "lawless band of migratory criminals." Judge Taft said, many years ago, that the "administration of the criminal laws in the United States was a disgrace to civilization."

The ambition of politicians with their rumbling laughter and affected smiles, the usurpations of political powers, and exercise of unlawful authority and steadily increasing invasion upon the powers of the sovereign states make fertile soil in which the seeds of suspicion, distrust, social unrest, resentment and crime quickly germinate.

It is time that we, through our civic organizations, local clubs, fraternal societies, school organizations and churches, should awaken the spirit of the old South that General Lee wanted to preserve and hand on to coming generations—the spirit that will urge us to protest in an intellectual and parliamentary way against further encroachments of the federal power upon the right of the sovereign states and their people. If our Constitution in its present form is inadequate to serve the ends of government, then let it be changed by amendment or the adoption of a new one, but, in Heaven's name, not by usurpation.

Lincoln said: "It is my duty and my oath to maintain inviolate the right of the states to order and control under the Constitution their own affairs by their own judgment exclusively."

Washington said: "If, in the opinion of the people, the distribution of the constitutional powers be in any particular wrong, let it be corrected in the way which the Constitution designates. But let there be no change by usurpation, for this, though it may in one instance be the instrument of good, is the ordinary weapon by which free governments are destroyed."

If we love our Government and our country, let us follow the commandments of our Constitution.